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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re GARRETT P., a Person Coming  
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

JOEL G.,

Defendant and Appellant.

G056702

(Super. Ct. No. 18DP0546)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Caryl A. Lee, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Shobita Misra, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

## **INTRODUCTION**

Joel G. appeals from an order denying him presumed father status and excluding him from the dependency proceedings for the minor Garrett P. The juvenile court issued this order before determining disposition, so our first task is to decide whether the order is appealable. We conclude that it is.

We affirm the order. Joel did not meet the burden imposed on a man not biologically related to the minor to establish presumed father status. He had no substantial relationship with Garrett, and his mere desire to assume a parental role is insufficient grounds to afford him presumed father status.

## **FACTS**

Orange County Social Services Agency (SSA) petitioned to detain Garrett shortly after his birth because his mother, Christa P., did not appear to be taking proper care of a newborn. According to the hospital staff, Christa handled him roughly, did not support his head, and refused to have him tested for a potentially fatal disease. She insisted on keeping him uncovered, despite repeated admonitions regarding a newborn's vulnerability to cold. She would not allow a pediatrician to examine Garrett in the hospital, and she told SSA she was not going to take Garrett to a pediatrician afterwards because he did not need a doctor. Christa appeared to have some cognitive or developmental delays. She consistently refused to speak with SSA, both when she was still in the hospital and afterwards.

Christa lived in Joel's apartment during the latter part of her pregnancy, although Joel denied that they were in a personal relationship. Joel was not at the hospital when Garrett was born, Christa did not allow him to visit the baby in the hospital, and his name was not on Garrett's birth certificate. Shortly after Garrett's birth, Joel told a social worker he had purchased baby equipment such as clothing and a car seat. He wanted a paternity test to "protect himself." He wanted to be sure Garrett was his child, but stated he was willing to help Christa if Garrett was not his.

Garret was taken into protective custody May 26, 2018, and placed in foster care three days later. The detention hearing took place on May 31. The court found detention necessary and ordered a minimum of seven hours weekly visitation for Joel and Christa. The court ordered a paternity test for Joel.

Joel visited Garrett intermittently in June and July. He refused to discuss the allegations of the detention petition with SSA unless he could record the conversations. He also refused to discuss disposition with the social worker.

The juvenile court held a jurisdiction/disposition hearing on August 14. The results of the paternity test were before the court. The test showed a zero percent chance that Joel was Garrett's biological father.<sup>1</sup> The juvenile court found it had jurisdiction over Garrett, but postponed the contested disposition hearing until August 29. It found Joel did not meet the criteria for a presumed father and excluded him from all further proceedings.

## **DISCUSSION**

### **I. Appealability**

Appeals in dependency proceedings are governed by Welfare and Institutions Code section 395, subdivision (a)(1), which provides in pertinent part: "A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment." Ordinarily, the disposition order, not the jurisdictional finding, is the "first appealable order in the dependency process." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 196 (*Sheila B.*))

Whether a predisposition order is appealable depends largely on its finality. (*In re Nicholas E.* (2015) 236 Cal.App.4th 458, 463 (*Nicholas E.*)) Code of Civil

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<sup>1</sup> The paternity test results came back on July 12. Joel disputed the results, and on July 16, the court ordered a retest. Joel missed his appointment for a retest. He claimed to be arranging a test on his own but never followed up.

Procedure section 904.1, subdivision (a), permits an appeal “from a judgment,” defined by Code of Civil Procedure section 577 as “the final determination of the rights of parties in an action or proceeding.”

A predisposition order denying presumed parent status is analogous to a predisposition order of dismissal for appealability purposes. “An order of dismissal constitutes a judgment for all purposes and, as such, is generally appealable,” (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 197), even though it occurs *before* the court issues a disposition order. A dismissal satisfies the final judgment rule based on the policy not to permit piecemeal appeals, and it is also final for res judicata purposes. (*Id.* at p. 197.) An order dismissing a dependency petition on the merits is an appealable order, because “[i]t is the end of the matter, and the child goes home.” (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 197; see *Nicholas E.*, *supra*, 236 Cal.App.4th at p. 463; *In re Lauren P.* (1996) 44 Cal.App.4th 763, 767-768.)

The juvenile court’s decision to deny Joel presumed father status and exclude him from the case likewise fits the description of a “final” judgment. Joel’s situation is analogous to *Sheila B.*, in which dismissing the petition meant “the end of the matter, and the child goes home.” (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 197.) Excluding Joel was the end of the matter for him and sent him home, without further recourse in the juvenile court. The dismissal followed an adjudication on the merits. After considering the evidence, the court determined Joel did not meet the criteria for a presumed father, so the decision was also res judicata. If Joel could not appeal, he would “suffer the inequity of being bound by the decision without any right of review.” [Citation.]” (*Salinero v. Pon* (1981) 124 Cal.App.3d 120, 128.)

We recognize, as did the court in *Sheila B.*, that this is not an ideal solution, given the passage of time before an appeal can be concluded and the potential for disruption in the event of a reversal. (See *Sheila B.*, *supra*, 19 Cal.App.4th at pp. 197-198.) But the alternative – waiting until the juvenile court issues a disposition order –

seems even less attractive. As was the case here, disposition hearings are frequently continued, sometimes for extended periods. Postponing an appeal until after a disposition order would create even more delay, and a reversal would be even more disruptive. Moreover, because Joel was excluded from all further proceedings and his court-appointed counsel was relieved, there is no practical way he could learn when the disposition order had been issued, and he would at that point have no one representing him to file a notice of appeal.

Accordingly, we hold that a predisposition order denying a party presumed parent status after a decision on the merits and excluding the party from further proceedings is an appealable order.<sup>2</sup> We now turn to the merits of the appeal.

## **II. Presumed Father**

We review a juvenile court’s determination of presumed father status for substantial evidence. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1650.)

### **A. Statutory Basis**

Family Code section 7611 provides the ground rules for establishing statutory presumed parent status. Joel has the initial burden of establishing the foundational facts of presumed fatherhood in the absence of marriage, attempted marriage, or a declaration of paternity: those are reception of the child into his home and open acknowledgement of paternity. (See *In re Spencer W.*, *supra*, 48 Cal.App.4th at pp. 1652-1653; Fam. Code, § 7611, subd. (d).)<sup>3</sup>

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<sup>2</sup> SSA asked us to consider Joel’s appeal as a writ petition. As the court noted in *Sheila B.*, “courts entertain writs sparingly,” and writ review is not a matter of right. (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 198.)

<sup>3</sup> Family Code section 7611 provides, “A person is presumed to be the natural parent of a child if . . . . [¶] . . . [¶] (d) The presumed parent receives the child into his or her home and openly holds out the child as his or her natural child.”

Although it is not necessary for a presumed father to be a biological father, his only alternative is to comply with the statutory criteria. Thus, Joel had to establish he had received Garrett into his home and held the child out as his own. There is no such evidence. Nothing in the record indicates Joel ever told anyone Garrett was his natural child. The closest he came to doing so was to tell a social worker that he was “99% sure” that Garrett was his child. But this was not the type of “open acknowledgement” the statute contemplates; Joel immediately qualified this statement by saying he wanted to be “100%” sure. In addition, Garrett never lived with Joel or even visited at his apartment. (Cf. *In re A.A.* (2003) 114 Cal.App.4th 771, 784 [although mother and presumed father did not live together, child visited father in his home, and father held child out as his]; see *In re D.M.* (2012) 210 Cal.App.4th 541, 549-550 [visits in other people’s homes did not qualify biological father for presumed father status].) Joel did not meet the statutory criteria for presumed fatherhood.

**B. Equitable Basis (*Kelsey S.* and *Jerry P.*)**

A *Kelsey S.* father is a biological father who does not qualify for statutory presumed father status because he has been prevented – either by the child’s mother or by third parties – from receiving the child into his home. Our Supreme Court has held that “[i]f an unwed father promptly comes forward and demonstrates a full commitment to his parental responsibilities – emotional, financial, and otherwise – his federal constitutional right to due process prohibits the termination of his parental relationship absent a showing of his unfitness as a parent. Absent such a showing, the child’s well-being is presumptively best served by continuation of the father’s parental relationship. Similarly,

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“In determining whether a man has ‘receiv[ed a] child into his home and openly h[eld] out the child’ as his own (§ 7611, subd. (d)), courts have looked to such factors as whether the man actively helped the mother in prenatal care; whether he paid pregnancy and birth expenses commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for the child after it no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the requisite paperwork; and whether his care was merely incidental. [Citations.]” (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1211.)

when the father has come forward to grasp his parental responsibilities, his parental rights are [as] entitled to equal protection as those of the mother.” (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849.) Regardless of compliance with a statute, a biological father who has made an effort to assume parental responsibilities has due process and equal protection rights to a relationship with his offspring. These rights are, however, rooted in the constitutional jurisprudence protecting a father’s biological connection with his child. (*Id.* at pp. 831-838.)

The court in *In re Jerry P.* (2002) 95 Cal.App.4th 793 (*Jerry P.*) extended the right to equal protection to a nonbiological or “equitable” father. (*Id.* at p. 813.) It held a man with neither a biological nor a marriage connection might qualify as a *Kelsey S.* father, recognizing that a man not married to the child’s mother may have done everything possible to assume a parental role in the child’s life and yet was precluded by circumstances – often the mother herself – from complying with the statutory requisites for a presumed father. For example, the mother may not allow the man to take the child into his home. (See Fam. Code, § 7611, subd. (d).)

The *Jerry P.* court held that “a man is entitled to protection from invidious discrimination in attempting to attain presumed father status if (1) once he ‘knows or reasonably should know of the pregnancy, he . . . promptly attempt[s] to assume his parental responsibilities as fully as the mother will allow and his circumstances permit,’ and (2) [he] ‘is indisputably ready, willing, and able to exercise the full measure of his parental responsibilities . . . . [¶] . . . [¶] . . . emotional, financial, and otherwise.’” (*Jerry P.*, *supra*, 95 Cal.App.4th at pp. 816-817, fn. omitted; see *In re Giovanni B.* (2013) 221 Cal.App.4th 1482, 1488.) As the court noted, the parent-child relationship depends not so much on DNA as on “the emotional attachments which derive from the intimacy of contact between the parent and child – “the countless gestures, large and small, that repeatedly reaffirm: I see you, I love you; I am yours, you are mine.”” (*Jerry P.*, *supra*, 95 Cal.App.4th at p. 817.)

The evidence supports the juvenile court's decision to deny Joel equitable presumed father status. According to SSA's reports, he did not promptly demonstrate full commitment to being Garrett's father. On the contrary, his immediate response to Garrett's birth was to request a paternity test to "protect himself," presumably from being saddled with support obligations for a child who was not his own. He wanted custody of Garrett only if the child was biologically his; if not, he was willing to help Christa out, but not, apparently, to the extent of fully committing to paternal responsibilities. He told SSA he would care for Garrett "in the event the child is his biological child." His willingness to commit to being Garrett's parent, at least initially, depended on a biological tie.

Joel's conduct after Garrett's birth also demonstrated a less than whole-hearted commitment to being Garrett's parent. While his visits with Garrett were better and more numerous than Christa's, this was a distressingly low bar. As of August 13, 2018, the date of the last SSA report in the record, Christa had visited twice, in mid-June, then did not visit at all for over a month. After resuming visits in late July, at the second visit, the monitor observed her pinching Garrett's foot when she put him back in his stroller hard enough to make him cry "hysterically." Joel visited more often in June and July – and treated Garrett appropriately – but he also canceled almost as many visits as he attended. The foster mother also reported that he had missed many visits.

According to the case law, the reason behind granting presumed father status to a man who is not biologically related to the child is to preserve an existing relationship. "[W]e presume a person is a child's father, notwithstanding the absence of a biological connection, in order to protect a *developed familial relationship*. Although a man with no biological connection to the child, no marital connection to the mother, and no way to satisfy the statutory presumption of paternity may nevertheless be deemed a presumed father, he must do more than simply show that he has done all he can under the circumstances to assert a right to parent. He must prove that he has an *existing familial*



*relationship with the child* such that his rights deserve the same level of protection as those of a biological mother.” (*In re D.M.*, *supra*, 210 Cal.App.4th at p. 554, italics added; see *In re P.A.* (2011) 198 Cal.App.4th 974, 980.)

The interest being protected by “equitable” fatherhood in the first instance is the child’s interest, not the adult’s, and this interest is in an existing parent-child relationship. (See discussion in *In re Nicholas H.* (2002) 28 Cal.4th 56, 64-68.) That is why the nonbiologically related men who have succeeded in obtaining presumed father status have, over an extended period of time, come to occupy a parental role in that child’s life. (See, e.g., *In re P.A.*, *supra*, 198 Cal.App.4th at pp. 977-978; *In re Kiana A.*, (2001) 93 Cal.App.4th 1109, 1120.)

Joel never had an existing close, parental relationship with Garrett. He may have wanted to have one, but that is not the criterion. “It is the parental relationship that warrants protection, not the mere desire to parent a child.” (*In re D.M.*, *supra*, 210 Cal.App.4th at p. 553.)

*Jerry P.*, on which Joel relies heavily, does not assist him. The case actually supports the juvenile court’s finding that Joel is not an “equitable” presumed father. Like Joel, the presumed father in *Jerry P.*, J.R., thought he was the minor’s natural father; like Joel, he discovered he was wrong. (*Jerry P.*, *supra*, 95 Cal.App.4th at p. 797.) These are, however, the only major similarities.

When J.R. found out the minor’s mother was pregnant, he told others that she was pregnant with *his* child. Although their relationship ended – because she was taking drugs and harming the unborn child – J.R. continued to support her, paying for her prenatal vitamins, medications, and bus fare to the doctor’s office. When the child, Jerry, was born, J.R. visited the hospital every day and told the hospital staff he was Jerry’s father. After Jerry’s detention, of which he had no notice, J.R. searched for the child for four months, until he finally discovered Jerry in foster care. He immediately asked the social worker in charge for permission to visit Jerry, and, when he learned of Jerry’s

foster placement, he contacted the foster mother to arrange visits. The juvenile court allowed J.R. to visit Jerry pending resolution of the presumed father issue; after receiving permission, J.R. consistently visited, working up from monitored visits at a visitation center to outings in a park or a shopping mall with the foster mother. “When he came for visits, J.R. brought diapers, food and toys. He played with Jerry, talked to him and told him how much he loved him. J.R. also called the foster mother twice a week to check on Jerry’s well-being.” (*Jerry P.*, *supra*, 95 Cal.App.4th at pp. 797-799.) He took a parenting class and completed a CPR class. (*Id.* at p. 799.) J.R. visited consistently between June 1999 and April 2000, by which time Jerry was calling him “Daddy.” (*Id.* at pp. 798-799.)

By contrast, Joel has had a far more distant relationship with Garrett. He initially remained aloof because he was not “100 % sure” he was Garrett’s biological father. There is no evidence he assisted Christa during her pregnancy – other than giving her a place to crash toward the end – or that he ever told anyone he was Garrett’s father. His visits, when they occurred, were appropriate but sporadic. When Joel blamed his absences on conflicts with work, the foster mother suggested he call the social worker to arrange a more convenient time; Joel did not follow through. Substantial evidence supports the juvenile court’s conclusion Joel did not carry his burden to establish presumed fatherhood under the criteria set forth in *Jerry P.*

Joel argues the juvenile court based its decision purely on biology, without considering other factors relevant to presumed father status. This is incorrect. It is true the court concentrated on the results of the paternity test; it did so because Joel was insisting the test was not reliable. But the court also considered the presumed-father requirements, such as reception into the home and the presence of a parent-child bond. The court based its ruling on all the relevant criteria, not simply on the paternity test. We cannot find error in that ruling.

### **DISPOSITION**

The order denying Joel presumed father status and excluding him from further proceedings is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.